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6 **BEFORE THE WASHINGTON STATE OFFICE**  
7 **OF THE INSURANCE COMMISSIONER**

8 In the Matter of the Application  
9 regarding the Conversion and  
10 Acquisition of Control of Premera  
11 Blue Cross and its Affiliates  
12  
13

Docket No. G02-45

UNIVERSITY OF WASHINGTON'S  
REPLY TO:

- 11 1) OIC STAFF'S RESPONSE TO  
12 REQUESTS FOR INTERVENTION; and  
13 2) PREMERA'S OPPOSITION TO  
MOTIONS TO INTERVENE

14 COMES NOW the University of Washington School of Medicine and replies to the OIC  
15 Staff and Premera responses to intervention in the above-captioned matter. The University's  
16 significant interest in Premera's conversion proceedings is that of medical education. By  
17 operating the School of Medicine, the University supplies medical professionals to the public.  
18 Conversion to for-profit status would add a profit motive that would compete with Premera's  
19 freedom to negotiate clinical reimbursement rates, thus impacting the University's ability to  
20 supply medical providers to the citizens of Washington. Without medical professionals, there is  
21 no access to health care and no point in having affordable medical insurance.  
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23 The University joins in the Joint Reply to OIC Staff Response and Premera Opposition to  
24 Motions to Intervene filed contemporaneously and makes the following points concerning its  
25 unique interests in the Conversion Transaction.  
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1 I. REPLY TO OIC STAFF'S RESPONSE

2 The University of Washington agrees with the OIC Staff that, as one of the petitioners,  
3 the University has demonstrated compliance with the requirements of RCW 48.31B.015(4)(b),  
4 48.31C.030(4) and 34.05.443(1) and that its motion to intervene should be granted. The  
5 University does not anticipate a need to conduct discovery and agrees to the OIC Staff's  
6 recommendations that either a prehearing conference be held to discuss the forms and limitations  
7 of permitted discovery, or alternatively, that discovery be limited as contemplated in the OIC  
8 Staff's response.  
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10 The University understands the OIC Staff's recommendation that it be grouped with other  
11 provider-oriented intervenors but distinguishes itself from other provider-oriented intervenors in  
12 that, unlike other providers, the School is charged with educating and training physicians,  
13 scientists, and allied health professionals dedicated to the distinctive missions of meeting the  
14 needs of our region and assuming leadership in the biomedical sciences and in academic  
15 medicine. In addition to training doctors, the University trains physician assistants, nurses, and  
16 other health care professionals. Physician assistants in particular serve an important role in  
17 providing access to medical care for rural underserved populations located in remote areas.  
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19 The University concedes that its interest in providing indigent care is aligned with the  
20 interest of other providers in providing indigent care. However, the University points out that  
21 through its component institutions, it provides more indigent care than any other single provider  
22 in the state. The public interest in health professions which serve primary care such as primary  
23 care physicians and physician assistants warrants that the School's intervenor status be granted  
24 apart from the provider group.  
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1 For these reasons, the University of Washington cannot agree to be grouped together with  
2 other providers, but agrees to cooperate and collaborate with other intervenors on issues of  
3 indigent care and requests that it be permitted to present its own evidence and argument. This  
4 request is reasonable and appropriate in light of the University's request for only limited  
5 participation as an intervenor.  
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## 7 II. REPLY TO PREMERA'S OBJECTION

### 8 A. The University of Washington's Interest in Medical Education is Significant and 9 Premera's Conversion Affects the University's Interest.

10 Medical education is a complex issue. However, at its heart is a very simple proposition:  
11 without medical education there are no medical professionals; without medical professionals,  
12 there is no access to health care; without access to health care, there is no point in having  
13 affordable medical insurance.

14 RCW 28B.20.440 directs the University to operate a School of Medicine. By operating  
15 the medical school, the University supplies a critical resource to the public. That resource is  
16 medical professionals.  
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18 Premera's conversion may affect the University's ability to supply medical professionals.  
19 The University's ability to supply medical professionals is impacted by the level of  
20 reimbursement it negotiates for the clinical services it provides. As a non-profit corporation,  
21 Premera has been free to negotiate clinical reimbursement rates that the University can and does  
22 utilize to benefit the public by assisting with the costs of operating the Medical School.  
23 Conversion to for-profit status will impose an obligation for Premera to maximize profits for its  
24 shareholders. That obligation may compete with clinical reimbursement rates, thus impacting  
25 the University's ability to supply medical providers to the citizens of Washington.  
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1           Premera's observation in its Opposition at page 17, footnote 12 highlights the  
2 predicament of the School of Medicine. Government funding doesn't cover the costs of training  
3 medical professionals. The government's expectation is that all purchasers support the cost of  
4 medical education in proportion to their use of services at teaching hospitals. When the  
5 University's ability to meet the costs of medical education in the clinical setting is threatened, the  
6 School of Medicine's interest in medical education is affected.

8           Premera's footnote also foreshadows a possible adverse impact to Premera's  
9 policyholders in specific and the insurance buying public in general. If Premera's financial  
10 objectives change such that it is no longer possible for the University to contract with Premera,  
11 Premera policy holders who may desire or require medical services unique to the academic  
12 medical center will be forced to choose between foregoing those services or paying out of  
13 pocket. To pay out of pocket renders the policy holders' insurance worthless and taxes them  
14 twice.

16           In addition to the injury faced by policy holders, if policy holders are not able to obtain  
17 medical care at the School of Medicine facilities, the School will not be able to maintain a  
18 sufficient patient base from which residents and other trainees gain necessary experience. If the  
19 School cannot maintain sufficient patient experience for medical students, medical residents and  
20 other trainees, the School cannot supply the public with trained and experienced medical  
21 professionals.

23           The University does not maintain that a conversion will necessarily harm the medical  
24 care seeking, insurance buying public. Rather, a change in Premera's financial goals can impact  
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1 the University's ability to supply medical care providers and thereby impact the public's ability  
2 to receive medical care, particularly for the indigent and those residing in rural areas.

3 B. Premera Misconstrues the Intervention Standard.

4 The University agrees with Premera that Civil Rule 24 does not set forth the qualifying  
5 standard for intervention in this proceeding.<sup>1</sup> However, Premera misconstrues the intervention  
6 standard. A petitioner in conversion proceedings under the Holding Company Act must show a  
7 significant interest that will be affected. Petitioners do not need to satisfy the legal criteria for  
8 intervention that is stated in the APA.<sup>2</sup> Thus, not impairing the orderly conduct of the  
9 adjudicative hearing and furthering the interests of justice, while important, are not legal  
10 requirements for intervention under the Holding Company Act.

11  
12 **1. The APA Governs How The Adjudicative Proceeding Should Be Conducted,  
13 But It Does Not Set The Standard For Intervention.**

14 Qualification as an intervenor in an action governed by the Holding Company Act turns  
15 strictly on "significant interest," not on a broader APA standard. Premera recognizes that the  
16 legal standards for intervention under the "relevant 'provisions of law' are found in the Holding  
17 Company Acts." *Premera Opposition*, p. 11. The Holding Company Acts do not impose  
18 additional standards of "interest of justice" and "not impair[ing] the orderly and prompt conduct  
19 of the proceedings." Those aspects are taken from the APA, which governs how the adjudicative  
20 proceeding should be conducted.

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22 As the Commissioner recognized in his First Order, the significance of the APA is in its  
23 application to conducting the conversion proceedings as an adjudicative proceeding.

24 The Holding Company Act specifies that the hearing held by the Insurance  
25 Commissioner in connection with his review of the Application shall be

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<sup>1</sup> See Premera's Opposition to Motions to Intervene ("Premera's Opposition"), p. 37-38.

<sup>2</sup> See Premera's Opposition, p. 10-11.

1 conducted as an adjudicative proceeding, resulting in a final administrative order.  
2 See RCW 48.31B.070, RCW 48.31.030 and 140, and The Administrative  
3 Procedure Act (“APA”). ...Consistent with the general requirements of the APA,  
4 the Commissioner has wide latitude to establish the procedures for the conduct of  
5 the proceedings.

6 *First Order: Case Management Order (“First Order”), p. 2-3.*

7 This is where the APA can be read in conjunction with the Holding Company Acts, as the  
8 Commissioner did when he ordered that:

9 A person whose significant interest is affected by the Conversion Transaction ...  
10 may participate in the proceedings. Such participants may present evidence,  
11 examine and cross-examine witnesses, and offer oral and written arguments, and  
12 in connection therewith conduct discovery proceedings in the same manner as is  
13 allowed in the superior court of this state. RCW 48.31B.015(4), RCW  
14 48.31B.030(4). ... The Commissioner shall issue a written ruling on the petitions  
15 thereafter. The ruling may contain conditions on an intervenor’s participation,  
16 such as (1) limiting an intervenor’s participation to designated issues in which the  
17 intervenor has established a significant interest; (2) limiting an intervenor’s use of  
18 discovery, cross-examination, and other procedures so as to promote an orderly  
19 and efficient proceeding; and (3) requiring two or more intervenors to combine  
20 their presentations of evidence and argument, examination of witnesses,  
21 discovery, and other participation in the proceeding.”

22 *First Order at 3 and 6.*

23 These types of conditions on participation effectuate orderly and prompt conduct of the  
24 proceeding and further the interests of justice as made applicable by the APA to *adjudicative*  
25 *proceedings*, not to significant interests.

26 Furthermore, Premera’s argument that intervention will impair the orderly and prompt  
conduct of the adjudicative hearing is not well founded. *See Premera Opposition, p. 41-46.* By  
allowing for intervention, the Holding Company Acts contemplate complexity and the APA  
offers tools to streamline complex adjudications. Rather than creating the “chaos” described by  
Premera, the Commissioner ensures that significant interests are considered in an orderly manner

1 by setting discovery limitations and otherwise streamlining intervenor participation. Moreover,  
2 even in the short period allowed to petition for intervention, all of the petitioners have  
3 exemplified cooperation, entering agreements to cooperate and streamline discovery and  
4 conferring several times to plan how common ground can be efficiently covered.  
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## 6 **2. The Authorities Upon Which Premera Relies Are Distinguishable.**

7 Premera argues that the Wisconsin insurance commissioner denied intervention to  
8 various groups, including the University of Wisconsin Medical School and the Medical College  
9 of Wisconsin because “ ‘the movants’ asserted interests do not constitute interests specifically  
10 protected under [the statute].’ ” *Premera Opposition, page 14*. Denial of the intervention  
11 motions may have been technically true in the Wisconsin proceeding, but in offering the  
12 Wisconsin insurance commissioner’s November 29, 1999 order, Premera failed to compare  
13 Wisconsin’s intervention standard with Washington’s.  
14

15 To have standing in Wisconsin, “the petitioners must meet a two-part test. They must  
16 demonstrate the decision of the agency causes injury to their interest and that the interest they are  
17 asserting is recognized by law.”<sup>3</sup> Under the Washington statute, individuals do not need to show  
18 an interest protected under law; rather, they need put forth a “significant interest” that the  
19 Commissioner determines is “affected” by the proceedings. RCW 48.31B.015(4)(b), RCW  
20 48.31C.030(4).  
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22 The Wisconsin Insurance Commissioner recognized the unique expertise and role of the  
23 local Medical School and Medical College in considering Wisconsin’s public interest in that  
24 conversion:  
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26 <sup>3</sup> Transcript of In the Matter of Application for Conversion of Blue Cross and Blue Shield United  
of Wisconsin, Case No. 99-C26038, Nov. 29, 1999, p. 6, available at  
<http://oci.wi.gov/bcbsconv/ah112999.pdf> (“Wisconsin Transcript”).

1 Each of these organizations has valuable input to offer in this process. The two  
2 medical schools can offer insight into how the original plan proposed by Blue  
3 Cross would operate. They also have unique insights into health issues of the  
citizens of this state.

4 *Wisconsin Transcript*, p. 5.

5 Significantly, even though the Wisconsin Insurance Commissioner did not find a legal  
6 basis to grant the motions to intervene, she utilized her statutory discretion to “grant them similar  
7 ability to participate in this process” including the opportunity to “offer expert testimony ...,  
8 pose questions to the applicant, and to discuss the pending application with the investment  
9 banking firm retained by [the Commissioner’s] office.” *Wisconsin Transcript*, p. 7 and 6.

10  
11 Premera has compared all the petitioners to individuals who were denied intervention  
12 status under standards that don’t apply to this proceeding. Specifically, citing to the United –  
13 Wisconsin conversion, Premera asserts that every single party who seeks intervention asserts “  
14 ‘potential injuries’ that are ‘no different from potential injury to any member of the general  
15 public.’ ” *Premera Opposition*, p. 15. However, Washington’s standard of “significant interest”  
16 is set forth without regard to the potential injuries of others. Citing to the case of *Cole v.*  
17 *Washington Utilities & Transportation Commission*,<sup>4</sup> Premera asserts that “[n]arrow, self-  
18 interested concerns that are outside the agency’s obligation to protect the public interest  
19 generally are not grounds for intervention.” *Premera Opposition*, p. 28. However, in affirming  
20 the trial court’s decision respecting intervention, the court was construing the promotional  
21 practices of a regulated gas company under chapter 80.01 RCW pertaining to the Utilities and  
22 Transportation Commission.  
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24  
25 Premera takes 10 pages to argue that those who have interests in common with those of  
26 the general public should not be allowed to intervene (*See Premera Opposition*, p. 14-24), then

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<sup>4</sup> 79 Wn.2d 302, 485 P.2d 71 (1971).



1 spends another eight pages arguing that those with special interests should not be allowed to  
2 intervene (*See, Id., pages 28-36*). If Premera's arguments are applied, then no party would be  
3 able to intervene and the intervention provisions of the Holding Company Acts would be  
4 rendered meaningless.

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6 Similarly, Premera's argument that the Commissioner, the OIC, and the Attorney  
7 General's responsibilities will sufficiently protect the public's interests renders the intervention  
8 provisions meaningless. The University of Washington agrees with Premera that these public  
9 officials are charged with protecting the public interest and that they are well qualified to do so.  
10 *See Premera's Opposition, p. 24-27*. However, it does not follow that intervention is not  
11 appropriate. The legislature recognized that interests of individuals who are not among the  
12 general insurance buying public might be impacted by the conversion. When those interests are  
13 significant, the legislature intended that the individuals be allowed to participate in the  
14 proceeding. If the legislature intended the purposes of the Holding Company's Acts to be  
15 fulfilled through the efforts of three public offices, there would have been no point to legislating  
16 intervention rights.

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18 C. Premera's Arguments Against Intervention Improperly Attempt to Shift  
19 Premera's Responsibilities.

20 The University does not disagree with Premera's assertions that "the Commissioner is  
21 required to consider whether reorganization 'will substantially increase or will prevent  
22 significant deterioration in the availability of health care coverage.' RCW  
23 48.31C.030(5)(a)(ii)(B)(II)" and that the "OIC must review whether the reorganization is 'likely  
24 to be hazardous or prejudicial to the insurance-buying public.' RCW 48.31C030(5)(ii)(C)(IV)."  
25 *Premera Opposition, p. 16 and 17*. However, without citation Premera also asserts that "[t]he  
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1 Commissioner has the statutory duty to insure [*sic*] that the rates paid by Premera's policyholders  
2 are reasonable, not designed to subsidize funding for indigent treatment or medical education."  
3 *Premera Opposition*, p. 35. This argument incorrectly shifts the responsibility Premera owes to  
4 its policy holders. The matter of contracting for rates Premera will pay for services to its policy  
5 holders is separate and distinct from the matter of assuring that the insurance buying public is not  
6 harmed. The two matters can be related, but responsibility for the matter of contracting rates  
7 belongs solely to Premera.  
8

9 The Commissioner's responsibility in ascertaining how a change in corporate status will  
10 affect the insurance buying public and the University's interest in supplying medical  
11 professionals to the public intersect at the same place: where the profit motive impacts the  
12 public's access to affordable health care. If a profit motive will compete with Premera's  
13 responsibility to provide affordable medical insurance and will undercut the University's ability  
14 to supply medical professionals, then the medical care seeking, insurance buying public is  
15 prejudiced.  
16

17 Premera's suggestions that policy holders will suffer if intervenors are permitted<sup>5</sup>  
18 overlook the fact that Premera has saddled the company with a huge expense simply by initiating  
19 the conversion proceedings in the first place. Lawyers were hired years in advance. Expert  
20 analysts and consultants have been toiling for years and will continue to toil throughout the  
21 proceedings. By statute, Premera bears the cost of the experts the Insurance Commissioner will  
22 use in analyzing the propriety of conversion. See RCW 48.31C.030(5)(b). The Holding  
23 Company Acts provide for adjudicative proceedings in which evidence and argument are  
24 submitted. RCW 48.31B.015(4)(b), RCW 48.31C.030(4). Under the statutes, intervenors and  
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<sup>5</sup> See Premera's Opposition, p. 3, 33, and 34.

1 discovery are contemplated. All of these costs, including the costs of responding to intervenors,  
2 were recognizable costs from the outset. *See, for example, Premera's Opposition, p. 24-25.* If  
3 policyholders are inflicted with higher rates to cover the costs of the conversion proceeding,  
4 Premera alone is to blame.

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6 D. The University Is Uniquely Qualified.

7 Even Premera recognizes the importance of medical education as part of these  
8 proceedings. According to Premera, the Commissioner has retained “nationally recognized  
9 experts with extensive experience in the health care industry from a multitude of perspectives,  
10 including, among others, those of ... academic medical centers... . *Premera Opposition, p. 6*  
11 *and fn. 3.* The University of Washington is the only medical school in a five state region. It is  
12 uniquely qualified to address how the supply of medical professionals benefits the region. The  
13 University asks only to inform the Commissioner about the benefits of medical education to the  
14 citizens of Washington. It does not seek to pose questions to either the applicant or experts  
15 retained by the Commissioner’s office and it does not seek to have medical education concerns  
16 alone govern conversion. Rather, the University’s requested participation is designed to be  
17 concise, direct, and informative on issues which the University is in the best position to address.  
18

19 III. CONCLUSION

20 The University of Washington is uniquely qualified to address how medical education is  
21 related to the public’s access to health care and how conversion of Premera would impact the  
22 University’s ability to supply medical professionals to the citizens of this state.  
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1 Wherefore, the University respectfully requests that the Commissioner grant its petition to  
2 intervene.

3 Dated this \_\_\_\_ day of December, 2002.

4  
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7  
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